

NOT FOR PUBLICATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

DANILLE BYFIELD.,

Plaintiff,

v.

ROBERT SHEERAN, ET AL.,

Defendants.

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Civil No. 21-8854 (RBK/MJS)

ORDER

KUGLER, United States District Judge:

Presently before the Court is Plaintiff's Motion to Remand (Doc. No. 2) and Motion for Default Judgment (Doc. No. 4); and

THE COURT NOTING Rule 55 of the Federal Rules of Civil Procedure governs a motion for default judgment. *Int'l Union of Painters & Allied Trades Dist. Council 711 Health & Welfare, Vacation & Finishing Trades Inst. Funds v. Vill. Glass, Inc.*, No. CIV.A. 11-1023 ES CL, 2012 WL 209076, at *1 (D.N.J. Jan. 24, 2012). First, a party must request an entry of default be entered by the Clerk of the Court. Second, following the Clerk's entry of default, the party must submit a motion for default judgment to the Court; and

THE COURT FURTHER NOTING Where plaintiffs have failed to follow this procedure, courts have denied their motions for default judgment because an entry of default by the Clerk under Rule 55(a) constitutes a general prerequisite for a subsequent default judgment under Rule 55(b). *See, e.g., Husain v. Casino Control Comm'n*, 265 F. App'x 130, 133 (3d

Cir.2008) (“Prior to obtaining a default judgment under either Rule 55(b)(1) or Rule 55(b)(2), there must be an entry of default as provided by Rule 55(a).”); and

THE COURT OBSERVING that Plaintiff cites to *Comdyne* for the proposition that an entry of default is not required for the Court to grant a motion for default judgment. Plaintiff misstates the facts of this case and it does not even come close to supporting the proposition it is held out to represent. In *Comdyne*, the issue on appeal was whether the district court abused its discretion in striking the answer and counterclaim and entering a default judgment against the defendants. *Comdyne I, Inc. v. Corbin*, 908 F.2d 1142, 1145, 1147 (3d Cir. 1990). The Third Circuit said nothing about whether an entry of default was required for a default judgment, and it did not have to because the clerk had entered default against the defendants for failure to answer to the amended complaint. *Id.* at 1145; and

THE COURT FINDING that Plaintiff’s motion for default judgment is **DENIED** because she failed to request an entry of default prior to filing for default judgment. *Husain v. Casino Control Comm’n*, 265 F. App’x 130, 133 (3d Cir.2008); and

THE COURT FURTHER NOTING both parties have stipulated to remand of this matter back to the Superior Court of New Jersey, Burlington County; therefore

IT IS HERBEY ORDERED that the case be remanded back to the Superior Court of New Jersey, Burlington County; and

IT IS FURTHER ORDERED that the Clerk of the Court enter this case as **CLOSED**.

Dated: 5/20/2021

/s/ Robert B. Kugler
ROBERT B. KUGLER
United States District Judge